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FISH & RICHARDSON P.C.  
3300 DAIN RAUSCHER PLAZA  
MINNEAPOLIS, MN 55402

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| EXAMINER |
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VAUGHAN, MICHAEL R

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| ART UNIT | PAPER NUMBER |
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2131

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/712,855

Applicant(s)

LEE ET AL.

Examiner

Michael R Vaughan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11-14-00 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35-U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3.6</u>   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

Claims 2-31 have been examined and are pending.

### ***Information Disclosure Statement***

An initialed and dated copy of Applicant's IDS form 1449, Paper No. 3 and 6, is attached to the instant Office action.

### ***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 2-22 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-21 of prior U.S. Patent No. 6,163,859. This is a double patenting rejection.

***Claim Rejections - 35 USC ' 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Gramlich et al, hereinafter Gramlich (USP 5,202,982).

As per claim 23, Gramlich teaches creating a first unique key for each of one or more respective software vaults for each software component of a software application stored on the respective software vault, each first unique key created from a metadata file associated with the respective vault and previously generated by determining run-time states of the application, each software vault remote from a first client computer on which the software application is installed (col. 6, lines 29-34, col. 5, lines 65-67, and Fig 4C);

creating a second unique key from a first software component of the software application, the first software component stored on the first client computer and the second unique key containing location attributes (col. 7, lines 20-30);

comparing each of the first unique keys with the second unique key and, if the second unique key does not match any of the first unique keys, storing in on; of the software vaults a copy of the first software component from the first client computer by performing a direct, random-access storage operation (col. 7, lines 30-47).

As per claim 24, Gramlich teaches performing a storage operation comprises storing the second key along with the copy of the first software component in the first accessed software vault (col. 6, lines, 29-34).

As per claim 25, Gramlich teaches generating metadata for the respective software component (col. 6, lines 41-45); verifying the integrity of the respective software component and generating an integrity checksum (col. 2, lines 27-31); and incorporating into the unique key the integrity checksum as well as information about the size, name and attributes of the respective software component (col. 6, lines 40-53).

As per claim 26, Gramlich teaches a method for retrieving one or more software components of a software application, comprising: creating a unique key for a software component of a software application, the software component to be accessed from one of one or more software vaults, the unique key containing location attributes and having been created from a metadata file associated with the software component and previously generated by determining run-time states of the application, each software

vault remote from a first client computer on which the software application is installed (col. 6, lines 29-34, col. 5, lines 65-67, and Fig 4C);

using the unique key to look up the software component sequentially on the one or more software vaults (col. 1, lines 27-30);

and accessing and retrieving the software component from the first software vault on which it is found (col. 8, lines 63-64).

As per claim 27, Gramlich teaches creating a unique key for a software component of a software application, the software component to be located in one of one or more software vaults, the unique key containing location attributes and having been created from a metadata file associated with the software component and previously generated by determining run-time states of the application, each software vault remote from a first client computer on which the software application is installed (col. 6, lines 29-34, col. 5, lines 65-67, and Fig 4C);

determining an order of accessibility for the software vaults (col. 1, lines 30-33);

for each software vault, using the location of the software vault and the unique key, forming a uniform resource locator (URL) (col. 11, lines 65-68);

and looking-up the URL in the software vaults, based on the order of accessibility, until the software component is located (col. 11, lines 58-61).

As per claim 28, Gramlich teaches a method for retrieving software components of a software application, comprising: transforming a metadata description of each

software component of a software application installed on a client computer into a key, each key having location attributes of the corresponding software component, the metadata description having been generated by determining run-time state of the software application (col. 6, lines 40-53 and col. 5, lines 65-67);

and using the location attributes of each key, retrieving the software components from one or more software vaults accessible to the client computer through the communications network (col. 3, lines 20-27).

As per claim 29, Gramlich teaches determining an order of accessibility of the software vaults and retrieving the software components from the most accessible software vaults (col. 10, lines 7-17).

### ***Claim Rejections - 35 USC ' 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between

the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gramlich in view of Bly et al, hereinafter Bly (USP 5,008,853).

As per claim 30, Gramlich teaches a method for recreating a software application, comprising: transforming a metadata description of each software component of a software application installed on a client computer into a key, each key having location attributes of the corresponding software component, the metadata description having been generated by determining run-time state of the software application (col. 6, lines 29-34, col. 5, lines 65-67, and Fig 4C);

comparing the first key to the second key and, if the first and second keys do not match, retrieving the software components from one or more remotely accessible software vaults (col. 6, lines 65-67); and using the retrieved software components to recreate the software application (col. 5, line 65—col. 6, line 11).

Gramlich does not explicitly teach determining the file space required by the software components or retrieving the software components from the client. Bly teaches a client computer can store the software components to reduce network traffic



between clients and servers (col. 25, lines 15-26). It is advantageous to reduce network traffic. One of ordinary skill would also know that the more data that is stored on the local computer, the less will have to be transmitted. Therefore one would logically conclude that the larger files being locally stored would have a greater impact on the network's traffic. One of ordinary skill would then be motivated to store the larger files on the client computer.

In view of this, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teaching of Bly within the system of Gramlich because it would reduce the amount of data transmitted between the client and server database by keeping a local copy of large data components on the client computer. One skilled in the art would have been motivated to generate the claimed invention with a reasonable expectation of success.

As per claim 31, Gramlich is silent in expressly disclosing initializing a difference flag; determining whether first binary data associated with the software components stored on the client computer and second binary data associated with the software components stored on the remotely accessible software vaults differ; if the first and second binary data differ, comparing the first and second keys based on sequence attributes including date created, date modified, date last accessed or version number; if the sequence attributes are equal, if one of the sequence attributes is newer than another, or if one of the sequence attributes is older than the other and the software components with the older attribute may be overwritten, setting the difference flag; and

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determining that there is not a match between the first key and the second key if the difference flag is set. Gramlich does disclose comparing software components stored on remotely accessible software vaults, including the attributes data such as version number (col. 2, lines 24-32). The examiner supplies the same rationale for the motivation as recited in the rejection of claim 30 to incorporate the teachings of Bly within the system of Gramlich. Incorporating the teaching of Bly would extend the comparing of software components to those stored locally as Bly teaches because there would be no need to retrieve software components from the network if the local computer possessed the most current version. Gramlich teaches comparing using unique keys (col. 3, lines 25-29). Gramlich inherently teaches a difference flag because when binary data are compared by binary operations, a bit is set to indicate whether a compare was true or false. This is equivalent the Applicant's difference flag.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael R Vaughan whose telephone number is 703-305-0354. The examiner can normally be reached on M-F 7:30-4:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 703-305-9648. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MV  
Michael R Vaughan

Examiner

Art Unit 2131

  
AYAZ SHEIKH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100